

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

v.

TYSON FOODS, INC., *et al.*,

Defendants.

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Case No. 4:05-CV-329-GKF-PJC

RESPONSE TO DEFENDANTS CARGILL INC.'S AND CARGILL  
TURKEY PRODUCTION LLC'S REQUESTS FOR ADMISSION,  
INTERROGATORIES, AND REQUEST FOR PRODUCTION  
OF DOCUMENTS TO PLAINTIFFS [SIC] (FEBRUARY 17, 2009)

GENERAL OBJECTION

The State objects to these Requests for Admissions because they exceed the number allowed the Cargill Defendants under LCvR 36.1.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Poultry waste is an effective fertilizer when properly used.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: The number of these requests exceeds the limit authorized by LCvR 36.1. Subject to the meaning ascribed to the term "effective fertilizer" by General Edmondson, and accepting that "properly used" means used where there is an agronomic need for both nitrogen and phosphorus and not in excess of the agronomic need for nitrogen or phosphorus, and used consistently with all state and federal statutes and common law, including but not limited to the prohibition on discharge and runoff

from the application site, this request is admitted.<sup>1</sup> However, this statement is denied to the extent that, as a matter of law, poultry waste is not a fertilizer under Oklahoma law. *See* 2 Okla. Stat. § 8-77.3(11). Based on the expert testimony of Dr. Gordon Johnson, poultry waste is not a good fertilizer. *See* Exhibit 1 hereto, at No. 13.

**REQUEST FOR ADMISSION NO. 2:** Every instance of application of poultry waste to lands within the IRW results in a release or threatened release of hazardous substances from a facility.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:** Subject to and without waiving the objection that the number of these requests exceeds the limit authorized by the LCvR 36.1, this request is admitted.

**REQUEST FOR ADMISSION NO. 3:** Not every instance of application of poultry waste to lands within the IRW results in a release or threatened release of hazardous substances from a facility.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:** Subject to and without waiving the objection that the number of these requests exceeds the limit authorized by LCvR 36.1, this request is denied.

**REQUEST FOR ADMISSION NO. 4:** The State of Oklahoma does not know whether every instance of application of poultry waste to lands within the IRW results in a release or threatened release of hazardous substances from a facility.

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<sup>1</sup> The State notes that Drew Edmondson is not a Plaintiff in this action. The State of Oklahoma is the Plaintiff. Attorney General Edmondson is the State's chief law officer and lead counsel for the State in this action.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:** Subject to and without waiving the objection that the number of these requests exceeds the limit authorized by LCvR 36.1, this request is denied.

**REQUEST FOR ADMISSION NO. 5:** Every compound that contains phosphorus is a hazardous substance under CERCLA.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:** Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, whether every compound that contains phosphorus is a hazardous substance under CERCLA is a question of law, and thus an improper subject for a request for admission. Further, *all* phosphorus-containing compounds are not the subject of the State's action, and thus this request is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, the State admits that phosphorus-containing compounds in poultry waste are a hazardous substance under CERCLA.

**REQUEST FOR ADMISSION NO. 6:** Not every compound that contains phosphorus is a hazardous substance under CERCLA.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:** Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, whether every compound that contains phosphorus is a hazardous substance under CERCLA is a question of law, and thus an improper subject for a request for admission. Further, *all* phosphorus-containing compounds are not the subject of the State's action, and thus this request is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, the State admits that phosphorus-containing compounds in poultry waste are a hazardous substance under CERCLA.

**REQUEST FOR ADMISSION NO. 7:** The Oklahoma Department of Agriculture, Food & Forestry intends the Animal Waste Management Plans it issues to Oklahoma poultry growers to meet the regulatory requirements under the Oklahoma Registered Poultry Feeding Operations Act and the rules and regulations developed under that Act.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:** Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is based upon an erroneous factual premise, is hence non-sensical, and therefore the State cannot admit or deny it. The Oklahoma Department of Agriculture, Food & Forestry does not "issue" Animal Waste Management Plans to Oklahoma poultry growers. *See* Response to Interrogatory No. 1.

**REQUEST FOR ADMISSION NO. 8:** The Oklahoma Department of Agriculture, Food & Forestry does not intend the Animal Waste Management Plans it issues to Oklahoma poultry growers to meet the regulatory requirements under the Oklahoma Registered Poultry Feeding Operations Act and the rules and regulations developed under that Act.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:** Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is based upon an erroneous factual premise, is hence non-sensical, and therefore the State cannot admit or deny it. The Oklahoma Department of Agriculture, Food & Forestry does not "issue" Animal Waste Management Plans to Oklahoma poultry growers. *See* Response to Interrogatory No. 1.

**REQUEST FOR ADMISSION NO. 9:** The Oklahoma Department of Agriculture, Food & Forestry develops the Animal Waste Management Plans it issues to Oklahoma poultry growers

based on current scientific standards for animal waste management and any applicable federal, state, or local regulations or policies.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:** Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is based upon an erroneous factual premise, is hence non-sensical, and therefore the State cannot admit or deny it. The Oklahoma Department of Agriculture, Food & Forestry does not "issue" Animal Waste Management Plans to Oklahoma poultry growers. Nor does it "develop" them. *See* Response to Interrogatory No. 1. Furthermore, in any event, this request for admission is vague and ambiguous. Specifically, the State objects to phrase "current scientific standards for animal waste management" and "any applicable federal, state, or local regulations or policies" as too vague and ambiguous because the State cannot determine to what standards, regulations, or policies the request is referring.

**REQUEST FOR ADMISSION NO. 10:** The Oklahoma Department of Agriculture, Food & Forestry develops the Animal Waste Management Plans it issues to Oklahoma poultry growers on a basis other than current scientific standards for animal waste management and any applicable federal, state or local regulations or policies.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:** Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is based upon an erroneous factual premise, is hence non-sensical, and therefore the State cannot admit or deny it. The Oklahoma Department of Agriculture, Food & Forestry does not "issue" Animal Waste Management Plans to Oklahoma poultry growers. Nor does it "develop" them. *See* Response to Interrogatory No. 1. Furthermore, in any event, this request for admission is vague and ambiguous. Specifically, the State objects to phrase "current scientific standards for

animal waste management" and "any applicable federal, state, or local regulations or policies" as too vague and ambiguous because the State cannot determine to what standards, regulations, or policies the request is referring.

**REQUEST FOR ADMISSION NO. 11:** The levels of land application of poultry litter set forth for specific fields in Oklahoma Animal Waste Management Plans are reasonable levels.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:** Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is vague and ambiguous and incapable of being responded to because it does not identify "levels of land application," any "specific field," or any specific AWMP, and because it does not define the term "reasonable" or specify "reasonable for what purpose." Therefore, this request is incapable of being either admitted or denied.

**REQUEST FOR ADMISSION NO. 12:** The levels of land application of poultry litter set forth for specific fields in Oklahoma Animal Waste Management Plans are not reasonable levels.

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:** Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is vague and ambiguous and incapable of being responded to because it does not identify "levels of land application," any "specific field," or any specific AWMP, and because it does not define the term "reasonable" or specify "reasonable for what purpose." Therefore, this request is incapable of being either admitted or denied.

**REQUEST FOR ADMISSION NO. 13:** The levels of land application of poultry litter set forth for specific fields in Oklahoma Animal Waste Management Plans are sometimes reasonable levels and sometimes not reasonable levels.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:** Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. Moreover, this request for admission is vague and ambiguous and incapable of being responded to because it not identify "levels of land application," any "specific field," or any specific AWMP, and because it does not define the term "reasonable" or specify "reasonable for what purpose." Therefore, this request is incapable of being either admitted or denied.

**REQUEST FOR ADMISSION NO. 14:** The State of Oklahoma has no evidence based on the specific chemical makeup of poultry waste that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:** Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. In addition this request is vague and ambiguous. Subject to and without waiving its objections the State admits that it has no evidence based solely on the specific chemical makeup of poultry waste that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house. However, as the Cargill Defendants are well aware, the State need not prove that the poultry waste polluting the waters of the IRW comes from any particular poultry house. In fact, the State does have evidence based on the specific chemical makeup of poultry waste, as well as other evidence, that clearly establishes that waste generated by the poultry integrator Defendants' birds, including the Cargill Defendants' birds, is present in the waters of the IRW.

**REQUEST FOR ADMISSION NO. 15:** The State of Oklahoma has no evidence based on DNA analysis that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. In addition, this request is vague and ambiguous. Subject to and without waiving its objection, the State admits that it has no evidence solely based on DNA analysis that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house. However, as the Cargill Defendants are well aware, the State need not prove that the poultry waste polluting the waters of the IRW comes from any particular poultry house. In fact, the State does have evidence based on DNA analysis, as well as other evidence, that clearly establishes that poultry waste generated by the poultry integrator Defendants' birds, including the Cargill Defendants' birds, is present in the waters of the IRW.

**REQUEST FOR ADMISSION NO. 16:**

The State of Oklahoma has no evidence based on biological markers that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house.

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

Objection. The number of these requests exceeds the limit authorized by LCvR 36.1. In addition, this request is vague and ambiguous. Subject to and without waiving its objection, the State admits that it has no evidence solely based on biological markers that any poultry waste that may be present in the waters of the Illinois River Watershed comes from any particular poultry house. However, as the Cargill Defendants are well aware, the State need not prove that the poultry waste polluting the waters of the IRW comes from any particular poultry house. In fact, the State does have evidence based on biological markers, as well as other evidence, that clearly establishes that poultry waste generated by the poultry integrator Defendants' birds, including the Cargill Defendants' birds, is present in the waters of the IRW.



## **INTERROGATORIES**

**INTERROGATORY NO. 1:** As to any Request for Admission above to which you did not response with an unqualified admission, please state all facts known to you on which you base your failure to admit and identify all witnesses and documents that you claim support those facts.

**RESPONSE TO INTERROGATORY NO. 1:** The State objects to this Interrogatory as overly broad and unduly burdensome because it requires statement of “all” facts, identification of “all” witnesses and “all” documents to support the facts.

The basis for the partial denial of request to admit no. 1 appears in the response to that request.

Requests to admit nos. 3 and 4 were denied on the ground that every land application of poultry waste to lands within the IRW results in a release or threatened release of hazardous substances from a facility. Facts confirming this fact have been repeatedly and exhaustively set out in discovery disclosures to Defendants, including but not limited to interrogatory responses, document productions, expert witness reports, and depositions and reiteration of these facts yet again is unduly burdensome and harassing. Yet further, facts supporting this fact were set forth in the State's response to Defendants' motion for partial summary judgment on CERCLA, Dkt. No. 1914, and errata thereto, Dkt. No. 1919, which is incorporated by reference. A copy of the factual statement (only) of that brief is attached hereto as Exhibit 1.

Requests to admit nos. 5 and 6 were objected to, and the basis for the objections is stated in the responses themselves.

Regarding requests to admit nos. 7 through 10, the Cargill Defendants should be well aware from a review of the deposition of the State's 30(b)(6) designee Teena Gunter, Esq., as

well as documents produced from the files of ODAFF, that ODAFF does not “issue” AWMPs. ODAFF hires contract plan writers as part of a grant from the USDA. AWMPs are not ODAFF products, but are written for the Natural Resources Conservation Service (NRCS) and the producer. AWMPs are written to specifications of the NRCS, using specific software required by the NRCS, not ODAFF. ODAFF is a technical service provider, and the contractors who write plans are like a field office of the USDA NRCS. Gunter Tr. 81-82. ODAFF has a cooperative agreement with the NRCS whereby the NRCS trains ODAFF contractors to write AWMPs on behalf of NRCS. Gunter Tr. 243:21-25. Six people have taken the training and been certified by NRCS. Gunter Tr. 244:1-4. The plan writers are not full time employees of ODAFF, but are all contractors. Gunter Tr. 244:11-13. The plan writers send two copies of the plan to the NRCS, which provides them to the grower, who in turn sends one copy to ODAFF for its files. Gunter Tr. 244:14-19. Dan Parrish and Teena Gunter would support these facts. Documents supporting these facts would include AWMPs previously produced in the grower files of ODAFF.

Requests to admit nos. 11 through 13 were objected to, and the basis for the objections is stated in the responses themselves.

**INTERROGATORY NO. 2:** Please identify with specificity the location and boundaries of each “facility” or portion of a “facility” (including but not limited to growers buildings, structures, installations, equipment, and land) for which you assert any Cargill entity is or was an “owner,” “operator,” or “arranger” and from which you assert a “release” or “threatened release” resulted.

**RESPONSE TO INTERROGATORY NO. 2:** The State responds to this Interrogatory pursuant to the definition and limitations set forth by the Cargill Defendants in Interrogatory No.

2. The State objects to this Interrogatory as overly broad and unduly burdensome because it requires with specificity the location (at least implicitly) of “all” facilities.

With respect to “facilities” in Oklahoma from which a “release” or “threatened release” resulted locations can, pursuant to Fed. R. Civ. P. 33(d) be determined from the grower and applicator files of ODAFF for the Cargill Defendants' poultry growing operations / poultry growing operations under contract with them, from land applicators contracting with the Cargill Defendants' poultry growing operations / poultry growing operations, and other persons receiving the waste. These documents have already been produced to the Cargill Defendants. Further, identification of “facilities” in Oklahoma and Arkansas from which a “release” or “threatened release” resulted can be derived from the Cargill Defendants' own files regarding their poultry growing operations / poultry growing operations under contract with them. Yet further, identification of “facilities” in Oklahoma and Arkansas from which a “release” or “threatened release” resulted can be found in the reports of the State's investigators (which have already been produced), as well as the State's productions of its scientific documents. Yet further, identification of “facilities” in Oklahoma and Arkansas from which a “release” or “threatened release” resulted can be derived from the State's expert reports (e.g., without limitation, Dr. Engel's expert report). Additional information responsive to this interrogatory can be derived from the State's response to Defendants' motion for partial summary judgment on CERCLA, Dkt. No. 1914, and errata thereto, Dkt. No. 1919, which is incorporated herein by reference. *See* Exhibit 1 hereto for the factual statement from that brief. *See also*, the State's Supplemental Responses to Defendant Cargill, Inc.'s Interrogatories dated October 19, 2007, with exhibits thereto, attached as Exhibit 2 to this response.

**INTERROGATORY NO. 3:** Please identify by date and location each “instance” known to Plaintiffs in which any Cargill entity, or any Oklahoma poultry grower who has contracted with any Cargill entity, has applied poultry litter in violation of any Oklahoma statute or regulation or in a manner inconsistent with the terms of any Animal Waste Management Plan issued by the Oklahoma Department of Agriculture.

**RESPONSE TO INTERROGATORY NO. 3:** The State objects to this Interrogatory as overly broad and unduly burdensome because it seeks identification of “each” instance in which the Cargill Defendants or their contract growers violated Oklahoma statutory / regulatory law. In addition, ODAFF does not issue AWMPs and, in any event, compliance with an AWMP does not necessarily equate to compliance with Oklahoma statutory / regulatory law (or for that matter, federal statutory law or state or federal common law). By way of example and without limitation, 27A Okla. Stat. 2-6-105(A) provides that “[i]t shall be unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state.” The evidence that the land application in the IRW of poultry waste from the Cargill Defendants' birds (as well as the other Defendants' birds) is or is likely to be causing pollution of the waters of the State is overwhelming. *See, e.g.*, Expert Reports of Drs. Fisher, Olsen, Engel, Harwood, and Teaf. Additionally, governmental reports are in full accord with this fact. *See, e.g.*, 2008 303(d) list. *See also*, Response to Interrogatory No. 2 and State’s Supplemental Responses to Defendant Cargill, Inc.’s Interrogatories dated October 19, 2007, with exhibits thereto, attached as Exhibit 2 to this response.

**INTERROGATORY NO. 4:** Please identify by date, location, and actor any claimed unlawful act or omission by any Cargill entity, or any poultry grower who has contracted with any Cargill entity, in connection with the land application of poultry litter.

**RESPONSE TO INTERROGATORY NO. 4:** The State objects to this interrogatory as overly broad and unduly burdensome because it is not limited, by its terms, to the IRW and appears to be implicitly seeking “all” or every information about unlawful acts. Moreover, it is cumulative of earlier discovery, and thus unduly burdensome. Subject to and without waiving these objections, and by way of example and without limitation, see responses and objections to Interrogatories Nos. 2 and 3. Additionally, see State’s Supplemental Responses to Defendant Cargill, Inc.’s Interrogatories dated October 19, 2007, with exhibits thereto, attached as Exhibit 2 to this response.

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION OF DOCUMENT NO. 1:** All documents in your possession, custody, or control concerning or relating in any way to any investigation by any government body into any professional nonfeasance or malfeasance by any director, shareholder, or employee of BMP’s, Inc. and Eucha-Spavinaw BMP’s, Inc., including but not limited to any investigations by the Oklahoma Conservation Commission or the federal Environmental Protection Agency.

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 1:** The State objects to this request because it is not reasonably calculated to lead to admissible evidence in this case, because the term “professional nonfeasance or malfeasance” is vague and ambiguous, and because it does not identify any director, shareholder, or employee of BMP’s Inc. and

Eucha-Spavinaw BMP's, Inc. to which it applies. Additionally, the request for "all" documents is overly broad and unduly burdensome.

**REQUEST FOR PRODUCTION OF DOCUMENT NO. 2:** All documents in your possession, custody, or control relating to any Oklahoma State Board of Agriculture designation of any Cargill entity, or any poultry grower who has contracted with any Cargill entity, as a "concentrated animal feeding operation" pursuant to 2 Okla. Stat. § 10-9.9(A).

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2:** To the knowledge of the State, no responsive documents exist. Should it determine that responsive documents exist, it will supplement its response to this request.

**REQUEST FOR PRODUCTION OF DOCUMENT NO. 3:** All documents in your possession, custody, or control relating to any Oklahoma State Board of Agriculture determination that any Cargill entity, or any poultry grower who has contracted with any Cargill entity, "is a significant contributor of pollution to waters of the state" pursuant to 2 Okla. Stat. §20-44 (2008) (formerly 2 Okla. Stat. § 20-6).

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 3:** To the best of the knowledge of the State, no responsive documents exist. Should it determine that responsive documents exist, it will supplement its response to this request.

**REQUEST FOR PRODUCTION OF DOCUMENT NO. 4:** All documents in your possession, custody, or control relating to any violation or alleged violation of any section or subsection of the federal hazardous waste subtitle, 42 U.S.C. § 6921 et seq., or of any regulation promulgated thereunder, by any Cargill entity, or any poultry grower who has contracted with any Cargill entity.

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 4:** The State objects to this request as overly broad and unduly burdensome and not calculated to lead to admissible evidence, especially since it is not limited to the allegations of the present action, or to violations in the IRW, and requests “all” documents. Moreover, by referring to a large body of statutory and regulatory law, this Request is vague and ambiguous, rendering it impossible for the State to determine what is asked for.

**REQUEST FOR PRODUCTION OF DOCUMENT NO. 5:** All documents in your possession, custody, or control reflecting or relating in any way to the issuance of any Animal Waste Management Plan to any poultry grower in the IRW from the commencement of this lawsuit to the present, including any list or compilation of such permits or the farmers to whom they were issued.

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 5:** The State objects because the request broadly seeks “all” documents “reflecting or relating” in any way to the issuance of any AWMP, which is overly broad, unduly burdensome and harassing. Moreover, to the extent this request implies that the State issues AWMPs, the State objects because it does not issue AWMPs or “permits.” *See* Response to Interrogatory No. 1. Additionally, this request is ambiguous because an AWMP is not a “permit,” and the State cannot determine what list or compilation of “such permits” is requested. Subject to and without waiving those objections, in the course of this litigation, the State has produced pertaining to AWMPs in the grower and applicator files of the ODAFF. Listing the documents already produced would be unduly burdensome and cumulative of other discovery already conducted and documents already produced.

**REQUEST FOR PRODUCTION OF DOCUMENT NO. 6:** All documents in your possession, custody, or control reflecting or relating in any way to any claim that any land application of poultry litter occurred at farms owned or operated by growers who contract or have contracted with Cargill or CTP.

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 6:** The State objects because the request broadly seeks “all” documents “reflecting or relating” in any way land application of poultry waste, which is overly broad and unduly burdensome. Subject to and without waiving those objections, in the course of this litigation, the State has produced documents responsive to this request in the grower and applicator files of the ODAFF. Listing the documents already produced would be unduly burdensome and cumulative of other discovery already conducted and documents already produced. Additionally, see the expert report of Engel and the State’s Supplemental Responses to Defendant Cargill, Inc.’s Interrogatories dated October 19, 2007, with exhibits thereto, attached as Exhibit 2 to this Response.

**REQUEST FOR PRODUCTION OF DOCUMENT NO. 7:** All documents in your possession, custody, or control reflecting or relating to evidence, if any, that you claim would enable the court to separate the amount of damage you claim was inflicted by Defendants as a result of the conduct alleged in Counts 4 and 5 of your Amended Complaint from the amount of damages resulting from the acts of the State of Oklahoma Plaintiffs or its tenants or acts committed with the consent or acquiescence of the State of Oklahoma.

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 7:** The State objects to this request because it is vague and ambiguous, and because of the flawed premise of this question and its underlying assumption of damages, or consent or acquiescence in damages



by the State, or by its tenants. The State has no such documents in its possession, nor is it aware that such documents exist.

**REQUEST FOR PRODUCTION OF DOCUMENT NO. 8:** All documents in your possession, custody, or control constituting, reflecting, or relating to any communication from the State of Oklahoma to any Defendant in this action relating to any violation of any federal, state, or local statute or regulation committed or allegedly committed by any grower who has or had a contract with that Defendant to raise poultry.

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 8:**

The State objects to this request as overly broad and unduly burdensome because it requests “all” responsive documents. *See, e.g.*, the State’s RCRA letters to the Defendants and the Complaint filed herein. In the course of this litigation, the State has produced documents responsive to this request in the grower files of the ODAPP and files of the ODEQ. Listing the documents already produced would be unduly burdensome and cumulative of other discovery already conducted and documents already produced.

**REQUEST FOR PRODUCTION OF DOCUMENT NO. 9:** All documents in your possession, custody, or control constituting, reflecting, or relating to any efforts by the State of Oklahoma prior to December 19, 1997, to prohibit or regulate in any way the land application of poultry litter or any consideration of such efforts.

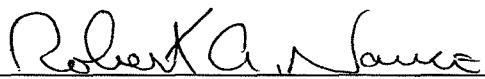
**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENT NO. 9:** The State objects to this request as vague and ambiguous, as well as overly broad and unduly burdensome in that it requests “all” responsive documents relating to “any” efforts to regulate “in any way” land application of poultry waste. Moreover, it is irrelevant, and not calculated to lead to

admissible evidence because neither any statute of limitations nor laches applies to the State for events before December 19, 1997.

There were numerous legal provisions before December 19, 1997 to regulate poultry waste. *See, e.g.* 27A Okla. Stat. § 2-6-105. These statutes are set forth in the Oklahoma Statutes and the session laws and are as available to Defendants as to the State. The State has also produced responsive documents at the OSRC and the office of the Oklahoma Secretary of the Environment, including but not limited to documents pertaining to Governor Keating's Animal Waste Task Force. Producing all such documents and laws would be unduly burdensome.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of March, 2009, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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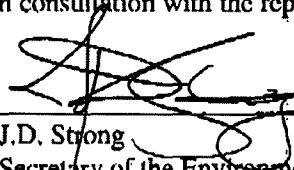
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Robert A. Nance

VERIFICATION

STATE OF OKLAHOMA )  
 ) ss:  
COUNTY OF OKLAHOMA )

I, J.D. Strong, being of legal age, hereby depose and state that I have read the foregoing responses to these interrogatory and that they are true and correct, to the best of my knowledge and belief, and that I furnish such responses based on consultation with the representatives of the State of Oklahoma.

  
\_\_\_\_\_  
J.D. Strong  
Secretary of the Environment  
State of Oklahoma

Signed and subscribed to before me on this 18<sup>th</sup> day of March, 2009.

My Commission Expires:  
Nov. 9, 2010

My Commission Number:  
02017963

